86-1209

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

in the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, NEW YORK STATE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

SAM POLUR, Esq.
Attorney Pro Se for
Petitioner
391 East 149 Street, Suite 319
Bronx, New York 10455
(212) 402-6497

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

In this case of first impression in the State of New York, can the Sovereign, through a Justice of the Supreme Court of the State of New York, in tandem with corrupt private attorneys effectively destroy the impeccable reputation for truth, for probity, for honorable living and professional standards of Sam Polur, Petitioner herein, through the following medieval practices against the said attorney, practicing since 1963:

* imprisonment for non-summary alleged criminal contempt of Court without trial;

* conviction without accusatory instrument;

* conviction without introduction of any evidence;

* conviction without presentation of testimony;

* conviction without confrontation;

* criminal monetary fines made payable to private attorney-prosecutors;

* criminal prosecution by private litigants and not by the state;

* use of criminal process to gain civil litigation goals.

* criminal conviction exclusively through use of affidavits alone;

* criminal conviction exclusively through known use of perjurious affidavits;

* criminal jurisdiction over an accused, allegedly, without a special proceeding or use of criminal processes as required by Constitution, statute and case law; and

* judicial misconduct in particpating in all of the foregoing conduct.

Question 2. Is it not a denial of First Amendment Constitutional right to petition the Sovereign where the Courts and Judicial

Processes are effectively used to deny and pre-empt the Right to Petition for Constitutional Grievances?

Question 3. Whether subject matter jurisdiction and/or jurisdiction in personam of attorney Sam Polur was ever acquired where a special proceeding, mandated by statute, was never commenced nor was the alleged criminal contemnor ever named a party to any special proceeding.

Question 4. Can a New York State Attorney, a member of the State Bar in good standing for some 24 years, be publicly humiliated and jailed without indictment, hearing, accusation, confrontation, counsel or evidence from private lawyers seeking private gain from such criminal conviction - acting openly as Public Prosecutors without the sanction of State Constitution, statute or public policy authorizing same?

Question 5. Can a Sovereign State permit and authorize a powerful and wealthy private law-firm to manipulate the State Judiciary by acting in tendem with a Constituitonal State Supreme Court Justice in violence of the most basic and fundamental protections to Constitution, Law and Statutes?

Question 6. Can a State Criminal Contempt conviction be sustained where it was obtained through abnegation and in violence to the State's Civil Rights Law, which in material part holds: "§12. Rights of persons accused of crime -- In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor." - where not a single iota of those historic safeguards

was provided the non-accused, who was nonetheless convicted of criminal contempt, sentenced to 30 days jail, fined monies to be paid to private attorneys prosecuting the case?

Question 7. Could a criminal convicton and imprisonment thereon be authorized and permitted by a State Sovereign where the attorney who was thus imprisoned was solely alleged to have acted as a process server, serving a summons allegedly in violation of an injunction order of a State Supreme Court Justice wherein the summons used to gain the unlawful conviction was admittedly served by another lawyer to another person in another forum than that charged against Sam Polur, convicted of that alleged "Criminal Contempt."

Question 8: Can a criminal conviction of a practicing attorney with an impeccable record of service to the Bar, to the Commu-

nity,to the highest standards of the Legal Profession, be publicly pilloried and vilified on a contrivance by private attorneys seeking public monies in tandem with a State Supreme Court Justice, and nowhere on or off the Record denying a single contention that conclusively reveals that Sam Polur's conviction was unonstitutionally obtained; that his jailing was an unparalleled State action in Kafkesque, Totalitarian, Unprincipled fashion.

Question 9. What authority exists for the Appellate Division of the New York State Supreme Court, First Judicial Department to approve incarceration without trial, without confrtontation, without a scintilla of proof, by having the entire criminal conviction presented to it for review, only to have a perfunctory "conviction approved" without opinion as its judgmental overview of deadly silence.

Question 10: What authority exists for Hon. Alvin F. Klein, Nisi Prius Justice New York State Supreme Court, to peremptorily refuse to conduct a coram nobis hearing even after his attention is focused on his previous failure to assure that the accused, convicted and sentenced attorney was not given basic protections of accusatory instrument, trial, confrontation and proof beyond a reasonable doubt - and yet sentenced and jailed for non-summary alleged "Criminal Contempt" by the same Justice Alvin F. Klein.

Question 11. Can our Federal and State Constitutions tolerate powerful private Attorneys acting as Private Prosecutors for private monetary gains where no State authority exists for private litigants to assume the mantle of Public Prosecutors in Criminal contempt proceedings; especially where they submit no evidence, are the sole explicators of

the alleged facts; provide no trial, no accusatory instrument; solely, eggregiously-perjurious affidavits submitted, and thereby obtain Criminal Contempt conviction and awards of monetary "fines" to be given to such private attorneys acting as Public Prosecutors.

Question 12. Does not Double Jeopardy, pursuant to Constitutional mandate, preclude a subsequent conviction by Justice Alvin F. Klein of New York State's Supreme Court, where Justice David Saxe, of the same Supreme Court, New York State and County jurisdiction, prior to Justice Klein's ruling and order, and known to Justice Klein and the private attorneys acting as Public Prosecutors, to have ruled Sam Polur "innocent" of "Criminal Contempt" on virtually identical pleadings submitted by the same private attorneys who furnished Justice Klein with same following their earlier submission to Justice Saxe.

Question 12. Could the State of New York, through prosecution without accusatory instrument, without trial, without evidence, without testimony under oath -- all by private attorneys acting as Public Prosecutors -- "convict" attorney Sam Polur of "Criminal Contempt" without a finding of "guilty beyond a reasonable doubt," or that Sam Polur allegedly served a summons "in wilfull disobedience to a lawful mandate" as was done herein, where no such finding was made.

Question 13. Could an Attorney with an impeccable record of service to the Bar, to the Community since 1963 Admission to the Bar, who has achieved demonstrable distinction as a man, as an American, as an Attorney, in: being the sole footnoted authority in Cuyler v. Sullivan, 446 U.S. 335, 344 (1980), the case which is this Court's fundamental ruling on the imperative duties of "retained" counsel as well as "assigned" counsel was first

formulated for our Nation; who, as a private citizen achieved the addition of two years to the probation sentence against Hon. Spiro Agnew, twice Vice-President of the United States and who, effectively, had his public personna concluded through Sam Polur's private and principled opposition to his perceived pro-Arab, anti-American and anti-Israel actions in derogation of statutory mandates to register as a Foreign Agent, effectively, by suing him as a private citizen in the United States District Court for Baltimore in 1976; who is the private attorney who materially aided in convincing the United States Court of Appeals for the Fifth Circuit that Feodore Fedorenko, subsequently ordered deported by this Court to Russia as a Nazi collaborator through his role as a wartime Death Camp Guard in Treblinka, Poland - and that the United States District Court for South Florida, Roettger, J., had, effectively, usurped

the sole prerogative of the President by exercising the Dispensing Power which resides in the Executive, by "forgiving" Fedorenko for his perjury in gaining admittance to the United States in 1950; when the attorney who, for the past three years has served, voluntarily, as an Aritrator in the Small Claims part of the State's Civil Court for the City of New York [for some two years]; for a year served at night as a teacher to Sing Sing inmates in Criminal Law and Domestic Relations Law, helping organize and foster a Paralegal Program, as a volunteer; who has in his 24 years of practice as an attorney directly assisted more than one hundred persons, impoverished or otherwise in despearate straits, without seeking one dollar in fees as a matter of practice and simple morality - how could he validly be defamed for life through a contrived "Criminal Contempt" conviction, and

find he has no means of "Petitioning" the State Courts for redress; that he is left "hanging in the breeze, swaying in the breeze"!

Question 14. Does not an otherwise highly-respected member of the Bar of State and Federal Courts have de minimus rights that a functional illiterate, convicted and jailed Clarence Gideon so gloriously possesses?

TABLE OF CONTENTS

	PAGE
Questions Presented.....	a
Table of Authorities.....	i
Opinions Below.....	1
Jurisdiction.....	3
Constitutional Provisions Involved.	2
Statement.....	4
Preliminary Statement for Granting the Writ.....	7
Reasons for Granting the Writ.....	9
Conclusion.....	59

TABLE OF AUTHORITIES

Table of Cases — Page(s)

United States Supreme Court

Application of Gault, 387 U.S. 1(1967).. 19

Armstrong v. Manzo, 380 U.S. 545 (1965). 26

Berger v. United States, 295 U.S. 78.... 56

Bloom v. Illinois, 391 U.S. 78..... 18,36,50, 52,55

Bodie v. Connecticut, 401 U.S. 371(1971). 18

Brady v. Maryland, 373 U.S. 83 (1963).... 37

Cammer v. United States, 350 U.S. 399 (1956)..... 33

Cooke v. United States, 267 U.S. 517(1924) 27,28

Davis v. Alaska, 415 U.S. 308..... 41

Donovan v. City of Dallas, 377 U.S. 408.. 43

Duncan v. Louisiana, 391 U.S. 145(1968).. 51,52

Ex Parte Bradley, 74 U.S. (7Wall) 864, 19 L.Ed. 214 (1868)..... 19

Gompers v. Buck Stove & Range Co., 221 U.S. 418..... 37

Groppie v. Leslie, 404 U.S. 496..... 33

Holden v. Hardy, 169 U.S. 366..... 32

Cases	Page(s)
Hovey v. Elliot, 167 U.S.409	32
In re Oliver, 333 U.S. 257 (1947)	31
In re Savin, 131 U.S. 267	27
In re Winship, 397 U.S. 357	37
Michaelson v. United States, 266 U.S. 42 (1924)	33,36
Morgan v. United States, 304 U.S. 1	32
Pointer v. Texas, 380 U.S. 400	27
Powell v. Alabama, 287 U.S. 45	32
Snyder v. Massachusetts, 291 U.S. 97	32
Taylor v. Hayes, 418 U.S. 488	32
Wisconsin v. Constantineau, 400 U.S. 433	30
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306	26

Cases	Page(s)
United States Courts of Appeals	
Gamble v. Gamble, 307 F.2d 781.....	19
In re Rosahn, 617 F.2d 690 (2dCir.1982)	32
Matter of Edward Joyce, 506 F.2d 373 (5thCir.1975).....	37
Matter of Reehlman, M.D. 763 F.2d 670 (1985).....	36
Polo Fashions v. Stock Buyers Int'l., Inc., 760 F.2d 698 (6thCir.).....	55A
United States v. Williams, 622 F.2d 830 (5thCir.1980).....	36
Weiss v. Burr, 484 F.2d 973,986.....	33
United States District Courts	
-none-	
United States Constitution Amendments	
Amendment 4.....	11
Amendment 5.....	11
Amendment 6.....	26,27
Amendment 14.....	11
Amendment 1.....	7,8

Cases — Page(s)

New York State Cases

Aryensinger's Dept. Store v. Shapiro Bros., 115 Misc.2d 850..... 14

Barreca v. Barreca, 77 A.D.2d 793, 430 N.Y.S.2d 739..... 25

Baumgarten v. Baumgarten, 273 App. Div. 411, 77 N.Y.S.2d 668..... 39

Billingsley v. Better Bus.Bureau of N.Y.C., Inc., 232 App.Div. 227.... 10

Board of Education v. Zeluck, 60 Misc. 2d 1090..... 9,11,16

Boon v. McGucken, 67 Hun. 251, 22 NYS 424..... 48

Bowler v. Ennis, 46 App.Div. 309, 61 N.Y.S. 686..... 17

Bridgeman v. American Book Co., 12 Misc.2d 63, 173 N.Y.S.2d 502... 49

Bruno v. Bruno, 50 A.D.2d 701, 375 N.Y.S.2d 442..... 25

Clark v. Truesdell, 79 N.Y.S.2d 413 (1948)..... 11,39

Comerford v. Comerford, 49 A.D.2d 818 (1stDept.1975)..... 19

Crisona v. Eastern Props. Imp. Corp., 27 A.D.2d 717..... 19

Concrete Co. v. Bricklayers, 200 App. Div. 714, 193 N.Y.S. 368..... 10

Crisona v. Eastern Prop.Imp.Corp..... 19

District v. Y.C.T., 42 A.D.2d 422.... 35

Cases	Page(s)
Dolard v. Koronsky, 199 N.Y. 558..	49
Douglas v. Adel, 269 N.Y. 144.....	9,10,14,16
Eastern Concrete Co. v. Bricklayers, 200 A.D. 714 (1922)....	10
Garry v. Garry, 467 N.Y.S.2d 175 (1983).....	
Geller v. Flamount Realty Corp., 260 N.Y. 346 (1932).....	15
Goldie v. Goldie, 77 App.Div. 12, 79 N.Y.S. 268.....	11
Hickland v. Hickland,56 A.D.2d 978, 393 N.Y.S.2d 192.....	
Hyman v. Ross, 84 N.Y.S.2d 102....	11
In re Barnes, 204 N.Y. 108 (1912)..	
In re Berkon, 43 N.Y.S.2d 334.....	
In re Clark's Will, 3 N.Y.S.2d 364	
Ingraham v. Maurer, 39 A.D.2d 258, 334 N.Y.S.2d 19.....	25
King v. Barnes, 113 N.Y. 476.....	25,35
Marine Midland Bank N.A. v. Bowker, 456 N.Y.S.2d 243.....	12,17
Matter of Katz v. Murtagh, 28 N.Y.2d 234.....	54

Cases	Page(s)
Matter of Passanno v. Passano, 43 A.D.2d 773.....	24
Matter of Rotwein, 291 N.Y. 116.	40
Matter of Wegman's Sons, 40 App. Div. 632, 57 N.Y.S. 987.....	36
Michalowski v. Ey, 4 N.Y.2d 277, 174 N.Y.S. 6.....	15
Mutual Milk & Cream Co. v. Tietjen, 73 App.Div. 287 (1902).....	48
Pawolski v. Schnectady, 217 N.Y. 117 (1916).....	40
People v. Balt, 34 A.D.2d 883 (2dDept.1983).....	43
People v. Gilmore, 88 N.Y. 628..	48
People v. Shapolsky, 8 A.D.2d 122	35
People ex rel. Barnes v. Court of Gen. Sessions, 147 N.Y. 290..	
People ex rel. Bernstein v. Lafetra, 171 App.Div. 269.....	40
People ex rel. Stearns v. Marr, 94 N.Y.S. 965 (1903).....	39
People ex rel. McCloskey, 8 A.D.2d 74.....	35-36
Penn-Dixie Industries,Inc. v. Castle, 77 A.D.2d 844.....	25
Powell v. Clauss, 93 A.D.2d 883.	35

Cases	Page(s)
Pereira v. Pereira, 35 N.Y.2d 148...	25
Pitt v. Davison, 37 N.Y. 235 (1867).	53,16
Powell v. Claus, 93 A.D.2d 883 (2d Dept.1983).....	35
Quantum Heating Services v. Austern, 100 A.D.2d 843.....	46
Re City of Corning, 162 N.Y.S.2d 687	48
Rockefeller v. Hein, 176 Misc. 659..	16,17
Royall v. Royall, 105 A.D.2d 632 (1st Dept.1984).....	12
Saal v. South B.R.Co., 122 App.Div. 364 (1907).....	42
Singer v. Singer, 52 A.D.2d 774.....	25
Sheridan v. Kennedy, 12 A.D.2d 332..	43
Shkolnick v. Shkolnick, 41 A.D.2d 523,	24
Re Young, 29 Misc.2d 817.....	44
State v. Unique Ideas, 44 N.Y.2d 345	40
State University of New York v. Denton, 35 A.D.2d 176 (4Dept.1970)	20,22
Steinman v. Conlon, 208 N.Y. 198.....15	
Stevens Plumbing Supp. v. Bi-County Plumbing, 404 N.Y.S.2d 964.....	11

Cases	Page(s)
Spector v. Allen, 281 N.Y. 258(1939)	42
Weeks v. Coe, 111 App.Div. 337(1906)	15
Wolf v. Hubbard, 191 Misc. 647.....	49
Yorktown Central School District v. Y.C.T., 42 A.D.2d 422.....	35
Zols v. Lakritz, 74 Misc.2d 322.....	24

MISCELLANEOUS AUTHORITIES

Citation	Page(s)
Civil Practice Law and Rules:	
Sec. 103 et seq.....	11,12,14
Sec. 401 et seq.....	9,10,11,14
Sec. 2106.....	55
Criminal Procedure Law, Sec. 440.10	
Judiciary Law, Sec. 750.....	39,48,60
Sec. 751.....	48
Sec. 752.....	
Sec. 753.....	
Sec. 756.....	
Sec. 772.....	46

Citation	Page(s)
Judiciary Law, Sec. 90(4)(d).....	50
Penal Law, §215.50.....	39
22 N.Y.C.R.R., §603.12(c).....	50
6 Wait's N.Y. Practice, 4th Ed.,p.281	
Contempt, 21 Jur.2d 294.....	15
Oswald on Contempt, at p.158.....	
A.B.A. Standards for Criminal Justice 20.....	33
N.Y.Const., Art.1, §6.....	11
Civil Practice Law & Rules, §2218....	46
Civil Rights Statute, §12.....	d

Opinions Below

The judgment of conviction rendered by the Hon. Alvin F. Klein of the New York State Supreme Court, New York County, dated June 26, 1985. The denial of appellant's petition for a writ of habeas corpus dated July 17, 1985, by the Hon. Jawn Sandifer, Justice, Supreme Court.Bronx County. The Order of the New York Court of Appeals dismissing the appeal from the denial of habeas corpus, dated November 12, 1985, by Hon. Sol Wachtler, Chief Judge. The Order of the Appellate Division, First Department, affirming the conviction, dated September 17, 1985. The Order of Justice Klein, dated June 23, 1986, denying a Writ of Error Coram Nobis. The Order of the Appellate Division, First Department denying leave to appeal Justice Klein's denial of the Writ of Error Coram Nobis, dated August

21, 1986. The Order of the Appellate Division, First Department, denying Petitioner's Motion to Reargue the denial of leave to appeal the denial of the Writ of Error Coram Nobis, dated October 7, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257.

Constitutional Provisions Involved

The following provisions of the United States Constitution are involved:

First Amendment Right to Petition the Courts for Redress of Grievances;

Sixth Amendment Rights to Trial by Jury, Confrontation of Accusers, Compulsory Process for calling Witnesses, to be Informed of the Nature and Cause of Accusation, and Assistance of Counsel;

Fifth Amendments Rights to not be subjected to Double Jeopardy, to not be deprived of his liberty and property with-

out Due Process of Law, and against Self-Incrimination;

Fourteenth Amendment Rights to not be deprived of life, liberty or property without Due Process and Equal Protection of the Law.

Jurisdiction

The Order of the Appellate Division, First Judicial Department of the Supreme Court of the State of New York denying permission to reargue petitioner's motion for leave to appeal to that Court was entered on October 7, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

Statement

On the 10th day of April, 1985, George Sassower, Esq., an Attorney qualified to practice law in the State of New York, served a summons upon Donald F. Schneider, Esq., an associate and partner in the Lawfirm of Feltman, Karesh, Major and Farbman, Esqs.

On April 11, 1985 Donald F. Schneider, Esq. filed a Notice of Motion with Affidavit in support to hold Sam Polur, Esq., your petitioner, in non-summary criminal contempt for allegedly serving the same summons served upon him [Schneider] the day before by George Sassower, Esq., allegedly in violation of an Order of New York STate Supreme Court Justice Ira Gammerman.

The summons annexed to Schneider's motion to hold Polur in non-summary criminal contempt bore the initials of one Michael J. Gerstein, Esq. with "received in court 4/10/85 M.J.G."

On May 29, 1985 Sam Polur, Esq. appeared before Hon. Alvin F. Klein, New York State Supreme Court Justice, for the purpose of representing Hyman Raffe and George Sassower, Esq., who were also being moved against for non-summary criminal contempt for alleged violations of Justice Gammerman's Order of January 23, 1985.

On May 29, 1985 there was no accusatory instrument produced, no one was present as accuser, no one was sworn to tell the truth, no testimony was taken, no evidence was introduced, no hearing was held, no trial was had, no confrontation occurred.

On June 26, 1985 Justic Klein, ex parte, issued an order and judgment finding Polur, Sassower and Raffe guilty of non-summary criminal contempt and ordered that they each serve 30 days in jail and pay fines of Two Hundred Fifty ($250.00) Dollars each to

the private attorneys who, at all material times, assumed the role of Public Prosecutors.

Sam Polur, Esq. made various vain attempts to overturn the unlawful and unconstitutional conviction and judgment by way of appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, the New York State Court of Appeals, including habeas corpus petitions in the State and Federal Courts, and finally, by way of a Writ of Error Coram Nobis in the New York State Supreme Court before Hon. Alvin F. Klein, where he had sought same to be heard pursuant to statute.

Polur was denied relief by Justice Klein who peremptorily refused to entertain the petition for a Writ of Error Coram Nobis. Polur was further denied permission to appeal Justice Klein's order of denial to the Appellate

Division as aforesaid.

Polur's motion to be permitted to appeal Justice Klein's order of denial of Coram Nobis relief pursuant to Criminal Procedure Law §440.10 of the State of New York was denied on August 15, 1986.

Thereafter Polur sought reargument of the Appellate Division's denial of permission to appeal. Said application to reargue was denied without opinion of any kind at any time on October 7, 1986.

The exhaustion of State remedies requirements has been satisfied thereby.

This petitoner now seeks a Writ of Certirorari from this Court on the grounds, inter alia, that his fundamental Constitutional rights have been grievously violated herein and that he has no other recourse or avenue that would effectively clear his otherwise impeccable good name and relieve him of the

unlawful and unconstitutional judgment of conviction that tarnishes his name and dirties his lifelong reputation for probity, for honor and for integrity.

Polur was unlawfully made to serve a thirty day jail sentence for the conduct of another, and based solely on knowingly perjured affidavits of Donald F. Schneider, Esq., invited by Hon. Alvin F. Klein, to buttress his ex parte Draconian rulings which put this lawyer in jail without a pretense of a hearing or trial or safeguarding even the most elemental rights due him as a citizen and resident of the United States of America.

No. _____

in the

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR Petitioner,

against

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI

TO THE APPELLATE DIVISION, FIRST JUDICIAL

DEPARTMENT, NEW YORK STATE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

SAM POLUR, Esq.
Attorney Pro Se for
Petitioner
391 East 149 Street, Suite 318
Bronx, New York 10455
(212) 402-6497

Preliminary Statement for Granting the Writ

THE COURTS OF NEW YORK STATE SURREPTITIOUSLY DEPRIVED PETITIONER OF HIS FIRST AMENDMENT RIGHT TO PETITION THE COURTS FOR CONSTITUTIONAL REDRESS OF GRIEVANCES

Initially, and throughout the period from April 1985 to the present date, there have been multiple actions by the private attorneys in tandem with Justice Alvin F. Klein and Appellate Court acquiescence, which effectively prevented your petitioner from his Constitutional right to petiton the Courts for redress of grievances.

The Constitutional right to petition the Courts would indeed be a hollow right if the right to be heard, under oath, to face your accuser(s) in a criminal action as herein, and every other fundamental safeguard included in our Bill of Rights, is not commensurate with and attendent to the Right to Petition.

It will be conclusively demonstrated hereinafter that the Constitutional right to petition the Courts has been rendered a hollow "right" where, as herein, the right to be heard has been still-born; it never achieved viable status. The Bill of Rights safeguards were wantonly abjured and stealthily withheld.

The "Right to Petition for Grievances" became and consistently remained a mere footnote to history insofar as the Court of the State of New York were concerned herein.

Reasons for Granting the Writ

Point 1

THE COURT BELOW DID NOT HAVE SUBJECT MATTER JURISDICTION DUE TO DEFENDANTS FAILURE TO PROCEED ACCORDING TO THE JURISDICTIONAL REQUIREMENTS FOR INITIATING A "SPECIAL PROCEEDING"

A petition for an order adjudicating a person guilty of criminal contempt in a civil action is a "civil special proceeding" requiring the movant-petitioner to acquire a completely new index number, independent of the underlying civil action, and styling the Notice of Petition or Order to Show Cause to reflect the exact parties involved in said special proceeding. CPLR, §§401 et seq.; Douglas v. Adel, 269 N.Y. 144,146; Bd. of Education v. Zeluck, 60 Misc.2d 1090,1093.

Donald F. Schneider, Esq., for Feltman, Karesh, Major & Farbman, Esqs., adopted the caption and title of the purported "lawful" summons, that commenced the underlying action,

to bring on what, by law, should be a Special Proceeding. That caption and title names Hyman Raffe as plaintiff and Feltman, Karesh & Major [predecessors to Feltman, Karesh, Major and Farbman,Esqs.] as defendant. This was done despite the clear language of the CPLR, §401, i.e., Petitioner v. Respondent, not Plaintiff v. Defendant. Nowhere is Sam Polur named as a party. Thus, the Notice of Motion and Motion are fatally defective jurisdictionally. Douglas v. Adel, supra; Eastern Concrete Co. v. Bricklayers, 200 App.Div. 714, 193 N.Y.S. 368; Billingsley v. Better Business Bureau of N.Y.C.,Inc., 232 App.Div. 227,228, 249 N.Y.S. 584,585 (1stDept.1931).

"...if the defect is substantial and the summons fails in its purpose, such summons is void and the court does not acquire jurisdiction. Where a summons is void, it

cannot be amended." Hyman v. Ross,84 N.Y.S. 2d 102, affd. 275 App.Div. 666, 87 N.Y.S.2d 422. See, also, CPLR 103 et al.; 401 et al; People ex rel. Clark v. Truesdell, 79 N.Y.S.2d 413.

Instructively, under the contempt statutes of the Judiciary Law, the relevant sections of the CPLR, and the due process clauses of the State and Federal Constitutions Sam Polur was entitled not only to be a "named party" to the Special Proceeding, but, was also entitled to have the special proceeding brought on in the manner prescribed by the CPLR and case law. Bd. of Education v. Zeluck, supra, at 1093-94; CPLR 103 et seq.; 401 et seq; N.Y. Const. Art.1, §6; U.S. Const. Amendments 4, 5 and 14.

"Contempt proceedings are stricti juris." Goldie v. Goldie, 77 App.Div. 12, 79 N.Y.S. 268; Stevens Plumbing Supp. v. Bi-County Plumbing, 404 N.Y.S.2d 964 (1978).

CPLR §103(b), provides in pertinent part:

> "Except where otherwise prescribed by law, procedure in special proceedings shall be the same as in actions and the provisions of the civil practice law and rules applicable to actions shall be applicable to special proceedings."

"Without a jurisdictional underpinning a judgment may not stand." Royall v. Royall, 481 N.Y.S.2d 361, 105 A.D.2d 632(1stDept. 1984). An "Order or judgment of a court lacking jurisdiction of the subject matter is void, and objection to court's jurisdiction in such case may be taken at any stage of the action, including an appeal." Marine Midland Bank, N. A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S.2d 243, affd. 59 N.Y.2d 739, 450 N.E.2d 247.

In view of these substantial deviations from the law the State Courts never exercized jurisdiction, the result being an unlawful conviction of criminal contempt against this petitioner, Sam Polur, Esq.

Point 11

THE STATE COURT DID NOT POSSESS EVEN IN PERSONAM JURISDICTION OVER SAM POLUR; CONSEQUENTLY, THE CONVICTION AND IMPRISONMENT FOR "CRIMINAL CONTEMPT" WAS WRONGFUL AND UNCONSTITUTIONAL

Sam Polur was not a Named Party to the "Special Proceeding" and, as such, the Court Never Had Nor Lawfully Acquired Jurisdiction over his Person in the Action Below

The Motion and Notice of Motion filed by Donald F. Schneider, Esq., for the named defendant Feltman, Karesh & Major, Esqs., was captioned.

HYMAN RAFFE,
Plaintiff,
-against-
FELTMAN, KARESH & MAJOR,
Defendant.

As seen, the name of Sam Polur did appear anywhere in the caption or on the face of the Notice of Motion or Motion, supra.

As a person not a named party to this "special proceeding", Sam Polur was unlawfully adjudicated guilty of criminal contempt and wrongfully imprisoned.

Jurisdiction must be expressed over a "named party" to an action or proceeding, not implied over a person unnamed as a party to the proposed action or proceeding. A Court has no jurisdiction over a non-party. Aryensinger's Dept. Store, Inc. v. Shapiro Bros. Co., Inc., 115 Misc.2d 850, 454 N.Y.S. 2d 813. Personal or individual jurisdiction over a person is not acquired unless that person (1) is a party to the action or proceeding and (2) has been properly served with a summons or Notice of Petition. CPLR 103 et seq.; 401 et seq; Douglas v. Adel, supra.

Where the accused, as herein, "is not a party to the civil action or special pro-

ceeding, the contempt proceeding is an independent special proceeding." 21 N.Y.Jur.2d, §62,p.298, citing Weeks v. Coe,111 App.Div. 337, 97 N.Y.S. 704, app.den. 112 App.Div. 908, 98 N.Y.S. 1117, affd. 188 N.Y. 627, 81 N.E. 1179; see also Geller v. Flamount Realty Corp., 260 N.Y. 346, 183 N.E. 520; Steinman v. Conlon, 208 N.Y. 198,101 N.E. 863.

New York Courts have held that the failure to give proper and sufficient notice of the warning requirement for a proposed criminal contempt conviction appearing on the face of the Notice of Petition/Motion renders such Notice jurisdictionally and fatally defective. It must follow, "on principle and from analogy," Michelowski v. Ey, 4 N.Y. 2d 277,at 282, 174 N.Y.S.2d 6,at 10, that a Notice of Petition/Motion, as hereinbelow, does not name a specific person as a party to said action or special proceeding is like-

wise jurisdictionally defective in regards to the person of this petitioner, Sam Polur.

Due process commands a proceeding which seeks to punish a person for criminal contempt must be initiated by notice personally served upon the person charged. Pitt v. Davison, 37 N.Y. 235 (1867); Board of Education v. Zeluck, supra. That was not done herein.

Initially, a petition for an order adjudicating a party guilty of criminal contempt is a civil special proceeding. Douglas v. Adel, supra; here, Sam Polur was never named as a party. The vice therein was correctly assessed by Justice Hallinan in Rockefeller v. Hein, 176 Misc. 659, 28 N.Y. S.2d 266, at p.267:

> "It is settled that the court may permit amendment where there is a misnomer or some defect in the designation. ... But in the instant case, there is not merely a misnomer but a complete absence of the

name of the defendant in the summons, which, in my opinion, renders it completely defective...While there is no doubt that the party served was the defendant intended as is the person now moving specially, the failure to designate him in any manner in the summons itself is a defect so fundamental that it cannot be subsequently remedied by the court." (emphasis added)

See, also, the leading case of Bowler v. Ennis, et al., 46 App.Div. 309, 61 N.Y.S. 686, cited by the Rockefeller, supra, Court.

It is clear from the foregoing that Sam Polur was unlawfully adjudicated ex parte in criminal contempt of court where jurisdiction was never acquired over his person. [Instructively, he was merely arguing a "motion" with respect to trying to hold George Sassower, Esq., one Hyman Raffe and himself in alleged "contempt of court". (sic!) The Court never acquired jurisdiction over his person.Objection to the Court's jurisdiction in such case may be taken at any stage of the action, including on appeal. Marine Midland Bank,

N.A. v. Bowker, 89 A.D.2d 194, 456 N.Y.S. 2d 243, affd. 59 N.Y.2d 739, 463 N.Y.S.2d 441, 450 N.E.2d 247.

Point III

THE CRIMINAL CONTEMPT RULING WITHOUT HEARING OR TRIAL IS A CONSTITUTIONAL NULLITY

Preliminarily, it must be emphasized, the criminal contempt conviction herein was of a non-summary nature. No trial. No confrontation. No hearing. No testimony under oath. Not a single authoritative case in the United States subsequent to Bloom v. Illinois, 391 U.S. 194 (1967) has sustained a criminal contempt conviction without a trial or a hearing.

Absent extraordinary circumstances, procedural due process requires notice and hearing before any governmental deprivation of a significant property interest. Bodie v. Connec-

ticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971). The early leading case of Ex parte Bradley, 74 U.S. (7 Wall.) 864, 872-874, 19 L.Ed. 214 (1868) found the Supreme Court ruling that an attorney may not be summarily disbarred without notice and hearing, even when the disbarment results from a charge of contempt for which the Court gave the attorney notice, an opportunity to prepare, and a hearing. See, also Gamble, 307 F.2d at 781.

Due process requires that a hearing be held before one can be adjudged in contempt. Comerford v. Comerford, 49 A.D.2d 818 (1stDept. 1975); Hickland v. Hickland, 56 A.D.2d 978,979, 393 N.Y.S.2d 192,194; Crisona v. Eastern Props. 27 A.D.2d 717, 717-718, 277 N.Y.S.2d 477. Application of Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967) held that a juvenile has the right to notice of charges, to counsel, to confron-

tation and cross-examination of witnesses. Surely, an attorney is entitled to no less! Here, Justice Alvin F. Klein "found" a criminal conviction for "contempt" of Court - without a trial or a hearing, absent a plea of guilt, without allocution, confrontation, any testimony under oath, or otherwise; not even a charge by the Court or an accusatory instrument of any kind! The leading case which was judicially determined some 15 years earlier, and thus well known to this experienced Justice - points up graphically and in detail what should have transpired. The unanimous Court in State University v. Denton, 35 A.D.2d 176, 316 N.Y.S.2d 297 (4th Dept.1970), luminously articulated the guiding rules which should have been followed herein. The unanimous Court stated:

> For the guidance of the court and parties in future criminal contempt proceedings arising out of civil actions, we

make the following comments: ... we are bound by decisions of the United States Supreme Court to recognize that "criminal contempt is a crime in the ordinary sense; * * * convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same." (Bloom v. Illinois, 391 U.S. 194,201, 88 S.Ct. 1477, 1481-1482, 20 L.Ed.2d 522.) In the words of Mr. Justice Holmes, "These contempts are infractions of the law, visited with punishment as such, if such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech." (Gompers v. United States, 233 U. S. 604,610, 34 S.Ct. 693,695, 58 L.Ed. 1115.)

In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself. Gompers v. Buck's Stove & Range Co., supra. The fundamental characteristics of both are the same. (Michaelson v. United States ex rel. Chicago, St.P.M.&O.R.Co., 266 U.S. 42,66, 45 S.Ct. 18,20, 69 L.Ed. 162.) Due process of law requires that the accused should be advised of the charges against him and have a reasonable opportunity to meet them by way of defense or explanation with the assistance of counsel and the right to call witnesses. (Cooke v. United States, 267 U.S. 517,537, 45 S.Ct. 390, 69 L.Ed. 767.)

We also recognized as fundamental in a proceeding of this nature the right to be con-

fronted by the accuser and to cross-examine him. When, as here, a person charged with criminal contempt has controverted the charges through his attorney, as he is entitled to do (Peo. ex rel.Supreme Court v. Albertson, 242 App.Div. 450,453, 275 N.Y.S.361, 365), a full hearing is required at which the disputed issues of fact may be resolved. At such a hearing witnesses should be produced, rather than mere affidavits, thereby ensuring a party the right to confront and cross-examine witnesses. These rights are basic to a defendant charged with the commission of a criminal act and we see no reason why they do not appertain to one charged with criminal contempt with the same force as those rights explicitely assured by Gompers v. Buck's Stove & Range Co., supra, and Cooke v. United States, supra. (pp.302-303, 316 N.Y.S.2d)

That prescient ruling, with facts and the law to be followed virtually "on point" with the instant case, made other singularly cogent declarations. (pp.301, 316 N.Y.S.2d):

> The courts * * *may not grant an enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." (Regal Knitwear v. National Labor Relations Board, 324 U.S. 9,13.)
>
> "...we conclude that knowledge of a non-party alone is not sufficient without proof of agency or collusion with the named

defendants to impose liability for a violation. (Accord, Wright v. Co. School Bd. of Greensville Co., Va., D.C., 309 F. Supp. 671; Briddon v. Briddon, supra; Rigas v. Livingston, supra; 7A Weinstein-Korn-Miller, N.Y.Civ.Prac.par. 6301.25.) Both Rigas and Briddon, supra, involved notice of the existence of the injunction on the part of the person charged with contempt, but the orders of contempt, nonetheless, were overtruned.

Instructively, in the case, Id., the defendants, members of the faculty of state university branch, were found in criminal contempt at a Special Term proceeding, as herein, where they were not parties to disruptive actions. They were not charged with acting in concert with or as agents named in the preliminary injunction. Faculty members therefore could not be held in contempt for their independent actions, even if they had knowledge of the injunction provisions. The Fourth Department ruling in 1970 was prescient. It unerringly set down the law to be followed where the facts meshed so unerringly.

Both State law and statutory mandate compel inexorably that a proposed contempt should be adjudicated at a plenary hearing with due process of law including notice, written charges, confrontation, assistance of counsel, compulsory process for production of evidence and opportunity of the accused to confront witnesses against him. Zols v. Lakritz, 74 Misc.2d 322, 344 N.Y.S.2d 626 (1973). When a lawyer, as herein, may be subject to a criminal contempt order and possible imprisonment, he is entitled to a full evidentiary hearing. Matter of Passonno v. Passonno, 43 A.D.2d 773, 350 N.Y.S.2d 771; Shkolnik v. Shkolnik, 41 A.D.2d 523, 340 N.Y.S.2d 70. Since the record herein reveals that petitioner was not advised of this fundamental right - that the Justice, Hon. Alvin F. Klein, merely handed down a ruling after a mere oral "argument" on a

Special Term motion, with no "charges" ever having been lodged against your petitioner - the order adjudging him in criminal contempt must be reversed. Bruno v. Bruno, 50 A.D.2d 701, 375 N.Y.S.2d 442 (3rd Dept. 1975); Ingraham v. Maurer, 39 A.D.2d 258, 334 N.Y.S.2d 19; King v. Barnes, 113 N.Y. 476, 21 N.E. 182. Denial of a hearing at which full proof should have been had and at which the moving party does not have the burden of proof is not due process. Singer v. Singer, 52 A.D.2d 774, 382 N.Y.S.2d 793; Penn-Dixie Industries, Inc. v. Castle, 77 A.D.2d 844, 431 N.Y.S.2d 34 (1stDept.1980). See, also, Pereira v. Pereira, 35 N.Y.2d 148, 319 N.E.2d 413.

Due process requires that an evidentiary hearing be held to resolve the disputed conflicts before one can be adjudged in criminal, or even civil contempt. Barreca v. Barreca, 77 A.D.2d 793, 430 N.Y.S.2d 739

(4thDept.1980). The Constitution requires "an opportunity * * * (be) granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S.545,552, 85 S.Ct. 1187,1191 (1965), "for [a] hearing appropriate to the nature of the case," Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652,657 (1950). A state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause. Id., 70 S.Ct., at 659.

It is not new or novel law that absent a plea of guilty, as herein, pursuant to ministerial constitutional compulsion, all courts adhering to the Constitution of the United States or New York State are without jurisdictional empowerment to convict, sentence and imprison for non-summary criminal contempt. The Sixth Amendment prohibits

through its confrontation clause the jailing of your petitioner herein, Pointer v. Texas, 380 U.S. 400, much less the "finding" (sic!) of criminal contempt.

This Court, in In re Savin, 131 U.S. 267, 33 L.Ed. 150, 9 Sup.Ct.Rep. 699, applied the rule to proceedings for contempt:

> Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the right to assistance of counsel, if requested, and the right to call witnesses to give testimony, and either relevant to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed. See Hollingsworth v. Duane, Wall.Sr.77, Fed.Cas.No.6,616; Re Stewart, 118 La. 827, 43 So. 455; Re Clark, 208 Mo. 121, 106 S.W. 990.

And as the Supreme Court ruled in Cooke v. United States, 267 U.S. 517 (1924): "When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense

by witnesses and argument." (267 U.S., at 536) This Court further spoke to the precise issue herein [this lawyer is found guilty of "criminal contempt" solely based on perjurious and fraudulent affidavit. The affidavit referred to April 10, 1985 summons served in Court allegedly on Schneider; but in truth the summons submitted as exhibit reveals it was "received" by attorney Gerstein! Again, it is nowhere alleged that Sam Polur served that summons on Gerstein. But it is admitted by George Sassower that he served it on Gerstein in Court on April 10, 1985.] In Cooke, supra, that attorney had written an "inflamatory letter" to the Judge. He was exonerated by this Court. The rule is "on point" herein (267 U.S., at 538). This Court was surely writing for the Ages!:

> The court proceeded on the theory that admission that the petitioner had written the letter foreclosed evidence or argument. In cases like this, where the intention with which acts of contempt have been committed must necessarily and properly have

> an import bearing on the degree of guilt and the penalty which should be imposed, the court cannot exclude evidence in mitigation. IT IS A PROPER PART OF THE DEFENSE. There was a suggestion in one of the remarks of the petitioner to the court that while he had dictated the letter he had not read it carefully, and that he had trusted to the advice of his partner in sending it; but he was not given a chance to call witnesses or to make a full statement on ths point. (emphasis all added)

Here, petitioner was unable to confront anyone. There was no hearing under oath. There was, in fact, no testimony whatsoever. No evidence was introduced. There was no confrontation of the accuser. In fact and in truth the summons on April 10, 1985 was served by Sassower on Gerstein, not by Polur on Schneider.

Instructively, Schneider never asserted, much less produced, anything to the contrary! He submitted to the Court as an "Exhibit" the summons served on Gerstein by Sassower, falsely alleging Sam Polur had served him [Schneider] with that summons. All of these facts took months to adduce! Petitioner was unaware of the duplicity and fraud committed upon him, except to know he was not guilty of any wrongdoing.

In a comparable issue, Constantineua infra, also punished by the lower Court, this Tribunal found the "procedure pursued was unfair and oppressive to the petitioner." Surely, that should be the finding herein as a matter of fact, as a matter of law, as a matter of Equity, as a matter of the rightness of things.

The Supreme Court in Wisconsin v. Constantineua, 400 U.S. 433, 91 S.Ct.507, 519 stated it eloquently:

> ...where the State attaches a "badge of infamy to the citizen, due process comes into play, Wieman v. Updegraff, 344 U.S. 183,191 ... "[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." Anti-Fascist Committee v. McGrath, 341 U.S. 123,168, 95 L.Ed. 817,852, 71 S.Ct. 624 (Frakfurter,J. concurring).
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. ... This appellee was not afforded a chance to defend herself. Only when the whole proceedings leading to the pinning of an unsavory label on

> a person are aired can oppressive results be prevented.

There could have been no greater "badge of infamy" herein than a "finding" (sic!) of criminal contempt of Court, followed by front page publication in the official legal newspaper, The New York Law Journal, with attorney Schneider's personal comments explicating the alleged necessity and validity of the finding of "criminal contempt", also on the front page for having provided that "scoop" to the publication.

In re Oliver, 333 U.S. 257, at 273 (1947) spoke to the effectively secret proceedings herein: "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense -- a right to his day in court -- are basic to our system of jurisprudence; and these rights include, as a minimum, a right to examine the

witnesses against him, to offer testimony and to be represented by counsel." See, also, Powell v. Alabama, 287 U.S. 45,68-70; Snyder v. Massachusets, 291 U.S. 97,116; Hovey v. Elliott, 167 U.S. 409, 418; Holden v. Hardy, 169 U.S. 366, 390-391; Morgan v. United States, 304 U.S. 1,14-15.

In re Rosahn, 671 F.2d 690, 697 (2d Cir.1982), also sets down the correct rule to be followed herein:

> This Court has approved the general principles set out in Alter, which held that it was not enough that the judge considered the parties' affidavits, oral argument and offers for the record; the witness was entitled to an "uninhibited adversary hearing" at which "at the very least ... [he must] be allowed to probe all nonfrivolous defenses ..." 482 F.2d, at p. 1024. See In re Sadin, 509 F.2d 1252, 1255 (2dCir.1975). More specifically, we have held that before a witness is imprisoned under §1826(a), he must receive notice of the charge against him and the facts upon which it is based, and time to prepare a defense. Id. (emphasis added)

See, also, Taylor v. Hayes, 418 U.S. 488;

Groppie v. Leslie, 404 U.S. 496,506, 30 L.Ed.2d 632; ABA Standards for Criminal Justice 20; Weiss v. Burr, 484 F.2d 973,986; Cammer v. United STates, 350 U.S. 399 (1956); Michaelson v. United States, 266 U.S. 42,66-67 (1924).

Point lV

THE SAXE, J. ORDER WAS A FINAL DETERMINATION AS TO PETITIONER

The motion to hold petitioner in contempt for serving the summons, allegedly, in question herein was impermissibly twice made - and twice ruled on: First to Justice David Saxe. Second to Justice Alvin F. Klein. The same alleged facts as to petitioner were put in issue, but the private attorneys, Feltman, Karesh, Major,Esqs., acting as Public Prosecutors in the Klein motion, in slippery fashion never focused attention of the second Court on the identical relief being sought before

him had already been submitted to the first Court. Justice Saxe ruled on the same matter prior to the ruling by Justice Klein. This was known to the private attorneys acting as Public Prosecutors. This was known to Justice Klein. The case as to petitioner was resolved by an explicit finding of "not guilty" before the "Criminal Contempt" conviction issued. As such, the first determination by Justice Saxe, ruling that attorney Polur was not to be held in contempt of Court - estopped Feltman, , Karesh, Major, Esqs. from re-litigating that issue. The subsequent ex parte "finding" of "Criminal Contempt" by Justice Klein is thereby a nullity on the grounds of res judicata, collateral estoppel. The ruling constituted Double Jeopardy in violation of Constitutional prohibition.

Point V

NO PROOF "BEYOND A REASONABLE DOUBT" WAS FOUND OR RULED UPON BY THE NISI PRIUS COURT, THUS CREATING A JURISDICTIONAL LACUNA IN THE "CRIMINAL CONTEMPT" "FINDING"

It is Hornbook Law that criminal contempt requires proof beyond a reasonable doubt that a party wilfully violated a court order. Powell v. Clauss, 93 A.D.2d 883, 461 N.Y.S. 2d 413 (2dDept.1983); Yorktown Central School District v. Y.C.T., 42 A.D.2d 422, 348 N.Y. S.2d 367,372 (2dDept.1973). Evidence necessary to find the accused in criminal contempt is beyond a reasonable doubt, in that it is an offense against the court's authority. King v. Barnes, 113 N.Y. 476, 21 N.E. 182. The People were required to prove petitioner's guilt beyond that reasonable doubt. People v. Shapolsky, 8 A.D.2d 122,125, 185 N.Y.S.2d 639,642; People ex rel. Valenti v. McCloskey,

8 A.D.2d 74,83, 185 N.Y.S.2d 952,961-962; Matter of Wegman's Sons, 40 App.Div. 632, 633, 57 N.Y.S. 987,988-989; Michaelson v. United States, 266 U.S. 42,66, 45 S.Ct. 18, 20, 69 L.Ed. 162. Here, the People of the State of New York never even appeared in the case. It was solely private attorneys, openly and blatantly seeking private gain. [Fines imposed were to be paid to them as private attorneys!]

But criminal contempt is a crime. United States v. Williams, 622 F.2d 830 (5thCir.1980), cert.den., 449 U.S. 1127, 101 S.Ct. 946, 67 L.Ed.2d 114 (1981. As such, the requisite standard of proof is "beyond a reasonable doubt." Matter of Reehlman, M.D., 763 F.2d 670,671 (1985). See, also, Bloom v. Illinois, 391 U.S. 194, 198, 88 S.Ct. 1477,1480, 20 L.Ed.2d 522

(1968); Gompers v. Buck Stove & Range Co., 221 U.S. 418,446, 31 S.Ct. 492,500, 55 L. Ed. 797; Matter of Edward Joyce, 506 F.2d 373 (5thCir.1975). The Supreme Court in, In re Winship, 397 U.S. 357, 90 S.Ct. 1068, at 1073, explicitely set forth the Constitutional import to be accorded this standard of proof:

> Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard - we explicitely hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

Hereinbelow, the Court should have perhaps re-read the memorable words found in Brady v. Maryland, 373 U.S. 83 (1963), at p. 87:

> Society wins not only when the guilty ones are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition

> candidly for the federal domain: "The United States wins its point whenever jsutice is done its citizens in our courts."

Hereinbelow, naked Judicial Power was asserted without the opportunity to rebut, to explain, to disclose, to explicate anything. No testimony under oath was taken. The New York State Supreme Court Justice herein merely heard oral argument on a motion. No one was under oath. No one testified subject to cross-examiation and penalties of perjury. No jury trial was permitted. No trial was held. No hearing under oath subject to CPLR 2106 and penalties of perjury was had. There was merely an oral argument on submitted affidavits alone - followed by Draconian "findings" of "Criminal Contempt" - not even in the presence of the Court. All followed by public shame and abuse, by obloguy, by imprisonement for a 30-day term, by professional abjuration, by public dishonor.

Point VI

NO ALLEGATION APPEARS IN THE ORDER THAT DISOBEDIENCE OF A "LAWFUL MANDATE" PURSUANT TO JUDICIARY LAW §750(A)(3)(4) OCCURRED

Power of the Courts to punish for criminal contempt existed at common law. People ex rel. Stearns v. Marr, 94 N.Y.S. 965 (1903). It is now conferred by statute. Judiciary Law §750; Penal Law §215.50 in New York State. A court of record has general power to punish a person for a contempt where he is guilty in respect of such court of any of the acts declared by statute to be contempts. Gold v. Menna, 25 N.Y.2d 475, 307 N.Y.S.2d 33, and no others. Baumgartner v. Baumgartner, 273 App.Div. 411, 77 N.Y.S.2d 668. The power to punish for criminal contempt cannot be extended in the least degree beyond the limits imposed by statute. People ex rel. Clarke v. Truesdell, 79 N.Y.S.2d 314 (1948).

Herein, significantly, nowhere in the Order of Justice Klein does it contain the statement that it was a "lawful" Order or

Mandate of the Court that was allegedly disobeyed. Such omission is jurisdictional. Id. See, also, Pawolski v. Schenectady, 217 N.Y. 117 (1916), where the Court of Appeals ruled the power of a court to punish for criminal contempt should not be exercised unless the acts constituting the contempt are clearly proved to be wilfully disobedient to the lawful mandate of a court. Where, as here, the terms of an Order are vague and indefinite as to petitioner, State v. Unique Ideas, 44 N.Y.2d 345, 405 N.Y.S.2d 656, your petitioner may not be adjudged in criminal contempt for wilfull failure to "obey." Intent is a necessary element in criminal contempt. People ex rel. Bernstein v. LaFetra, 171 App.Div. 269,275, 157 N.Y.S. 386,390; Matter of Rotwein, 291 N.Y. 116,122, 51 N.E.2d 669,672.

There was no mandate of commitment herein, only the order "finding" "criminal

contempt." So "intent" could not therein be determined. There was no hearing. There was no testimony under oath. There was no confrontation pursuant to Constitutional mandate. There was no allocution. There was no submission other than an affidavit this petitioner has characterized as being materially false. Finally, there can be no "contempt" if the alleged disobedience was a result of misunderstanding or mistake - or, as herein, simply the act of a messenger or a process server as a favor for a lawyer-colleague. The petitioner's rights in the premises were totally abjured and violated. There could be no confrontation of witness(es) against him. None existed as to any criminal act. [See, e.g.,the landmark ruling in Davis v. Alaska, 415 U.S. 308, 94 S.Ct.1105, 39 L.Ed.2d 347.]

The necessity of there first being a "valid" and "lawful" mandate before contempt will lie for failure to obey it can be imposed, was effectively stated in Spector v. Allen, 281 N.Y. 258, 22 N.E.2d 864(1939). The issue concerned whether a valid mandate of the court issued to a prospective witness before a grand jury. The Court's language is instructive(pp.259 and 260 of 281 N.Y.):

> Punishment for a criminal contempt is a drastic remedy for wilfull wrong. The mandate must be clear before disobedience can subject a person to such punishment.
>
> The defect here is not purely formal or technical. To protect the liberty of the individual from possible abuse of power, punishment for contempt is hedged about with restrictions and subject to regulations imposed by the Legislature.
>
> Disobedience only of mandates of the court given in accordance with law are subject to such punishment. The command must be clear; disobedience must be wilfull. (emphasis added)

See, also, Saal v. South B.R.Co., 122 App.Div.

364, 106 N.Y.S. 996 (1907); People v. Balt, 34 A.D.2d 932, 312 N.Y.S.2d 587 (1st Dept. 1970); Sheridan v. Kennedy, 12 A.D.2d 332, 212 N.Y.S.2d 296.

This Court's ruling in Donovan v. City of Dallas,377 U.S. 408, 84 S.Ct. 1579 (1964) is "on point". At page 1583 of 84 S.Ct. the following lucid rule is enunciated:

> It is argued here, however, that the Court of Civil Appeals' judgment of contempt should nevertheless be upheld on the premise that it was petitioners' duty to obey the restraining order whether that order was valid or invalid.
>
> The Court of Civil Appeals did not consider or pass upon this question, but acted on the assumption that petitioners were guilty of "wilful disobedience of a valid order." 368 S.W.2d at 244 (emphasis supplied)
>
> Since we hold the order restraining petitioners from prosecuting their case in the federal courts was not valid, but was invalid, petitioners have been punished for disobeying an invalid order. (emphasis added)

Of course, that very issue was not resolved or even considered in the case at bar. By

not providing petitioner basic due process, basic equal protection of the laws and the related fundamental rights - e.g., not having a charge uttered by the Court, no testimony under oath, no confrontation of accuser(s) by petitioner, inter alia, there was no forum available to prove the falsity of the contentions, to plead "not guilty" to a formal charge, to reveal and prove that no "lawful mandate" of any Court was even stated to have been violated.

Point V11

THE STATE COURT ABUSED ITS DISCRETION BY HOLDING PETITIONER IN CONTEMPT BECAUSE OF LACK OF A FACTUAL BASIS

Instructively, the only act arguably charged as against petitioner is alleged service of a single summons on April 10, 1985. Yet, the only"evidence" of same was a totally distinct proof of service of a distinct and different summons on one Michael J. Gerstein, Esq., marked "received in court 4/10/85. M.J.G." It is nowhere alleged that Sam Polur had served Gerstein with that summons. Nonetheless, petitioner went to jail for allegedly serving that summons on Donald F. Schneider, Esq! And that summons was submitted by Schneider as a Court exhibit to have attorney Sam Polur convicted and incarcerated. Because there was no hearing, no testimony under oath, no trial - it proved impossible to controvert or explain anything.

Such, standing alone, is insufficient to create a Draconian "Criminal Contempt" of Court.

Apparently, Justice Klein of the New York State Supreme Court was not aware that a hearing with testimony under oath, with confrontation of his accuser(s) obtainable to the accused, with the necessity of an accusatory instrument presented to such "defendant" (sic!). Quantum Heating Services v. Austern, 100 A.D.2d 843, 474 N.Y.S.2d 81; Judiciary Law, §772; CPLR 2218. Surely, it is even more imperative in a criminal contempt proceeding. A hearing would have readily adduced the total paucity of the charges by private attorneys - especially where they wrote the ORDER for the Justice awarding to them as private attorneys monetary gains which could only be paid to the Sovereign!

Incredibly, the "Criminal Contempt" Order came down "on the sly." This petitioner reasonbly beleived the Court would,

pursuant to Due Process and Equal Protection of the Laws as Constitutional mandates, at worst merely "find" that there was a basis presented for holding of a hearing or trial as to whether criminal contempt would lie! There was no statutory or Constituional premise for the, effective Star Chamber ruling and "finding" (sic) which came down.

Point V111

MULTIPLE FINES ORDERED PAID TO PRIVATE LAWYERS PURSUANT TO JUSTICE KLEIN'S CRIMINAL CONTEMPT ORDER IS AN UNCONSTITUTIONAL RULING

The Order filed by Justice Klein on July 1, 1985 cannot be sustained as a "criminal contempt" against petitioner. Multiple fines are therein ordered to be paid by the alleged contemnors to private attorneys

who drew up and submitted the Order, to wit, Feltman, Karesh & Major, P.C. "In such case the punishment is imposed to vindicate the dignity of the court, and in the interest of public justice, and not for the benefit of the party. The fine belongs to the public, and not to the moving party..." (emphasis added) Mutual Milk & Cream Co. v. Tietjen, 73 App.Div. 287,290 (1st Dept.1902). See, also, Boon v. McGucken, 67 Hun,251, 22 N.Y. S. 424; People v. Gilmore, 88 N.Y. 628; Judiciary Law, §751.

A criminal contempt is for wilfull disobedience to a lawful mandate of the Court (Judiciary Law,§750). That was nowhere alleged in the Order.

As succinctly stated in Re City of Corning, 162 N.Y.S.2d 687,691 (Sup.Steuben Co.1957): "A criminal contempt is an offense against the PEOPLE of the State and a fine

is imposed which goes into the public treasury..." (emphasis added)

Contempt statutes are a limitation on the power of the Court to punish for contempt and should therefore be strictly construed ("strictissimi juris"). Dollard v. Koronsky, 199 N.Y. 558 (1910); Re Young, 29 Misc.2d 817, 211 N.Y.S.2d 621; Bridgman v. American Book Co., 12 Misc.2d 63, 173 N.Y.S.2d 502 (1958). And strict construction is generally in favor of the accused. Wolf v. Hubbard, 191 Misc. 647, 78 N.Y.S.2d 671 (1948). That rule, it is respectfully urged, must be applied herein.

Point IX

A JURY TRIAL SHOULD HAVE BEEN ORDERED AS A MATTER OF MINISTERIAL CONSTITUTIONAL COMPULSION BEFORE CONVICTION, SENTENCING, IMPRISONMENT COULD BE ACHIEVED AS HEREIN WITH RESPECT TO PETITIONER SAM POLUR

Inasmuch as the "Criminal Contempt" conviction herein is considered a "serious crime" (Judiary Law §90[4][d]), 22 NYCRR §603.12[c], a jury trial was mandated despite incarceration of less than six (6) months. Bloom v. Illinois, 391 U.S. 194 (1968). The language of this Court in this leading case is instructive:

> Our deliberations have convinced us, however, that serious contempts are so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution, now binding on the States. ... dispensing with the jury in the trial of contempts subjected to severe punishment represents an unacceptable construction of the Constitution, "an unconstitutional assumption of powers by the [courts] which no lapse of time or respectable

array of opinion should make us hesitate to correct." Black & White Taxicab & Transfer Co. v. Brown & Yellow Cab & Transfer Co., 276 U.S. 518, 533 (1928) (Holmes,J., dissenting). (p.198

The Constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes. (p.200)

Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both (p.201)

Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. (p.202)

Our experience teaches that convictions for criminal contempt, not infrequently resulting in extremely serious penalties, see United States v. Barnett, 376 U.S. 681, 751 (Goldberg, J., dissenting), are indistinguishable from those obtained under ordinary criminal laws. If the right to jury trial is a fundamental matter in other criminal cases, which we think it is, it must also be extended to contempt cases. (pp.208-209) (all emphasis, supra, added)

And, at the same Court Term, this Court in Duncan v. Louisiana,391 U.S. 145 (1968)

memorably added to the fundamental rulings enunciated in Bloom, Id.:

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. (p.156)
>
> Our conclusion is that in the American States, as in the federal juridical system, a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants. (p.158)

In the case at Bar, clearly the Justice forgot the profound teachings of this Tribunal in Bloom, supra, and in Duncan, Id. Not only was there no hearing, no trial, no right to compulsory process for witnesses, no right to confront accuser(s), no right to a speedy and public trial, no right to have testimony under oath and subject to cross-examination, but the "finding of Criminal Contempt" was merely an arbitrary

ruling and conviction pursuant to which your petitioner was sentenced to and served time in jail. See, also, Pitt v. Davidson, 37 N.Y. 235 (1867), based on the "well settled principle of the common law, that no person shall be condemned unheard." That was done herein!

Point X

THE CONSTITUTIONAL PROHIBITION AGAINST DOUBLE JEOPARDY WAS VIOLATED BY JUSTICE KLEIN WHO KNEW OR SHOULD HAVE KNOWN OF THE PRIOR ACQUITTAL BY ACTING JUSTICE SAXE OF THE SAME ALLEGED ACT BY SAM POLUR OF SERVING A SUMMONS IN ALLEGED VIOLATION OF A THIRD JUSTICE'S ALLEGED RULING THEREIN

On or about May 9, 1985 Acting Supreme Court Justice David B. Saxe exonerated petitioner of a criminal contempt of court for having allegedly violated the "Order of the permanent injunction of the Honorable Ira Gammerman dated January 23, 1985" by service

of a summons upon Feltman, Karesh & Major, on April 1, 1985.

P.C./ That finding was succinctly stated:

"ORDERED, that defendant's motion to punish Sam Polur for a criminal contempt is denied."

(emphasis added)

On or about June 6, 1985 Justice Alvin F. Klein, absent an accuser under oath, one subject to cross-examination and penalties of perjury, without a hearing or trial or testimony under oath, with the right to allocution and the right to be confronted by a sworn accuser, each denied [see, e.g., Matter of Katz v. Murtagh, 28 N.Y.2d 234, 238, 321 N.Y.S.2d 104, 269 N.E.2d 816], ruled petitioner should be convicted of criminal contempt, sentenced, imprisoned and fined. The Order of Justice Klein was entered in the Clerk's Office for New York County on July 1, 1985 moments after that of Acting Supreme Court Justice Saxe's Order of Exo-

neration.

The non-summary criminal contempt, thus, was founded on mere submitted affidavits. The accused therein, your petitioner, was not afforded the right to a trial for the "serious crime" as found by this Court in Bloom, supra. No information or indictment was obtained. He lost his rights to testify under oath, to have his accusers testify subject to CPLR 2106 and penalties of perjury, to confront his accuser(s) and the right to a decision rendered by an impartial fact finder. He was clearly the victim of Double Jeopardy prohibitions of Federal and State Constitutions, rendering everything which occurred against petitioner illegal and unconstitutional. Sam Polur, admittedly, served one summons only on April 1, 1985. Justice Saxe found him innocent of any wrongdoing.

Point XI

NO CONSTITUTIONAL OR STATUTORY AUTHORITY EXISTS TO HAVE NAMED PRIVATE ATTORNEYS AS THE SOLE PROSECUTORS IN THIS CRIMINAL CONTEMPT PROCEEDING

In Polo Fashions v. Stock Buyers Int'l, Inc., 760 F.2d 698 (6thCir.1985), Chief Judge Lively, speaking for the Unanimous Court, spoke directly to the issues herein. In Polo, Id., defendants asserted that absent any supervision or control by the United States Attorney's Office, prosecution of a criminal contempt action by counsel for a party in the underlying civil litigation constitutes a denial of due process. The Court memorably ruled:

> We conclude that it was an abuse of discretion for the district court to appoint attorneys for Polo to conduct the criminal contempt proceedings. These attorneys could assist the United States Attorney or an assistant, but could not proceed alone. ... The deve-

lopement of safeguards for defendants in criminal contempt proceedings, particularly with respect to the rights to trial by jury, was reviewed in Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968).

...

One of these procedural protections is the requirement that criminal actions be prosecuted by disinterested, publicly employed attorneys. A private attorney employed to represent a client does not operate under the same restraints as a public prosecutor. Aside from his ethical obligations a privately employed attorney has the single permissible objective of forwarding his client's interests. [emphasis added]

A public prosecutor, on the other hand, must consider the public interest which lies as much in seeing justice done in every case as in the successful prosecution of any particular case. The role of federal prosecutor was eloquently described by the Supreme Court in Berger v. United States, 295 U.S. 78,88, 55 S.Ct. 629,633, 79 L.Ed. 1314 (1935):

"The United States Attorney is the representive not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such,

he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilty shall not escape or innocence suffer." [all above p.704 of 760 F.2d]

The Court wrote incisively of the fundamental distinction between the private and the public prosecutor:

It is too much to expect an attorney committed to his client and the client's cause to recognize the "twofold aim" referred to in Berger when acting as prosecutor in proceedings which, if successful, can benefit immeasurably that client and his cause.

We recognize that federal prosecutors occasionally overlook their twofold obligation and become too concerned with obtaining convictions. However, this overzealousness does not have its roots in a conflict of interest. ... This is quite different from approving a practice which would permit the appointment of prosecutors whose undivided loyalty is pledged to a party interested only in a conviction. [all above emphasis added]

It is respectfully urged there is no statutory law authorizing Private Prosecutors in the State of New York.

The actions herein are a brazen usurpation, a naked wresting of power re-

siding exclusively in the Sovereign, in the People of the State of New York. This entire proceeding - from its unlawful inception to the present day, is unconstitutional. We pray this Supreme Court of the United States find so at this time.

The classic formulation cited in Berger, supra, was abjured and emasculated by the Private Prosecutor herein: The self-serving Order he drafted, crassly mandated payment of "fines" (sic!) to a private lawfirm. No statement is found that a "lawful mandate" was violated. Double Jeopardy in violence to Constitution and fundamental rights was achieved and manipulated out of focus. The private attorneys, qua Public Prosecutors, failed to focus attention to the Court on the prior contrary ruling of "not guilty" by

Saxe, J. on the same basic facts and issures subsequently ruled on by Klein, J. Other egregious omissions and commissions of the fundamental import in law and in equity are cited throughout this petition.

Conclusion

1. The Court should find that private attorneys seeking private profits from a "Criminal Contempt" conviction violate the Constitution of the State and Federal Sovereigns.

2. Double Jeopardy and Collateral Estoppel should be found because Acting Supreme Court Justice David B. Saxe first found Sam Polur "Not Guilty" of Criminal Contempt; thereafter on the same basic facts and issues Justice Alvin F. Klein found Sam Polur "Guilty" of "Criminal Contempt."

3. A Criminal Contempt ruling without a hearing or trial is a Constitutional nullity.

4. No proof beyond a reasonable doubt was found or ruled upon by Justice Klein, thus creating a jurisdictional lacuna in the "Criminal Contempt" Conviction merely based on a motion "argument." (sic!)

5. There was a failure to allege disobedience to a "lawful mandate" pursuant to Judiciary Law §750(A)(3)(4), a fatal omission.

6. No factual basis existed for holding petitioner in criminal contempt without even a semblance of proving "intent" or any other required male fide, indispensible for criminal conviction of a "serious crime" as herein.

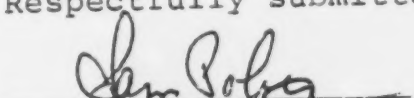
7. A jury trial should have been accorded to petitioner as a matter of ministerial Constitutional compulsion before conviction, sentencing, imprisonment could be achieved herein with respect to the petitioner.

8. Failure to have brought on the criminal conviction proceeding without

adherence to New York State's Civil Practice Law and Rules, Criminal Procedure Law, related Statutes and Federal and State Constitutional mandates for Equal Protection of the Law and Due Process of Law, made such "finding" as herein inimical to fundamental fair play and one that should now be reversed and stricken pursuant to Law and Equity.

The petition for a writ of certiorari should be granted, and the Court thereafter grant all other further and different relief it deems just and appropriate in the premises.

Respectfully submitted,



Sam Polur
Attorney at Law
Pro Se Petitioner
391 East 149 Street,
Suite 318
Bronx, New York 10455
Tel: (212) 402-6497

DATED: January 10, 1987.